

## **REMARKS**

Claims 127-175 remain pending in the application. Claims 127, 132-234, 238, 239, 143-152, 156-157, 162-165, 169, 170 and 175 stand rejected under 35 U.S.C. §102(e) as being anticipated by Hardacker (US Pub. 2002/0115454). Claims 128-131, 135-137, 140-142, 146-148, 153-155, 158-161, 166-168 and 171-174 stand rejected under 35 U.S.C. §103 as being unpatentable over Hardacker in view of Narayanaswami (US Patent 6,657,654).

Applicants respectfully request reconsideration of the rejections to claims 127-175 in view of the revised declaration attached hereto remove Hardacker as a reference and in light of the following remarks.

### **Claim rejections.**

Claims 127, 132-234, 238, 239, 143-152, 156-157, 162-165, 169, 170 and 175 stand rejected under 35 U.S.C. §102(e) as being anticipated by Hardacker (US Pub. 2002/0115454). Claims 128-131, 135-137, 140-142, 146-148, 153-155, 158-161, 166-168 and 171-174 stand rejected under 35 U.S.C. §103 as being unpatentable over Hardacker in view of Narayanaswami (US Patent 6,657,654).

Applicants submit herewith a declaration by Luis M. Ortiz (hereinafter referred to as the "Ortiz declaration") to antedate the effective date of February 20, 2001 of the Hardacker reference, in accordance with 37 C.F.R. §1.131(a). The Ortiz declaration is accompanied by Exhibit A that evidences both conception and reduction to practice of the invention as claimed prior to the effective date of February 20, 2001 of the Hardacker reference with the filing of provisional patent application 60/243,561 by Applicants on October 26, 2000.

Exhibit A of the Ortiz declaration is a photocopy of the provisional patent application as filed including filing receipt that firmly establishes constructive reduction to practice of the claimed features of the invention relied on in the later file Hardacker reference, but dated well before Hardacker on October 26, 2000. Therefore, given the Ortiz declaration and Exhibits A and B, subject matter of claims 127-175 relevant to the rejections was conceived and reduced to practice prior to February 20, 2001, and thus antedates Hardacker.

The declaration provides an element by element analysis in claim chart format of the pending claims and direct references to support found in the 60/243,561 provisional to support the claim elements.

Therefore, claims 127-175 are not anticipated by or unpatentable over Hardacker. Applicants, therefore, respectfully request that the rejections be withdrawn.

**Claim amendment.**

Claim 127 and 134 as written are similar in scope. It is clear from the specification and other independent claims that hand held devices do not have to be in the entertainment venue to receive data when cellular wireless networks are used for the wireless transmission of data as taught in the specification. No new matter was added and no additional search is required since the amendment remains consistent with other independent claims (e.g., 138, 145, 151, 164, 170 and 175, where location is not specified). Therefore, Claim 127 was amended only to remove unnecessary language "located within the entertainment venue and" while remaining consistent with the specification.

**Conclusion.**

Applicants submit that the pending claims are in a condition for allowance. Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. §§ 102 and 103 based on the attached declaration and exhibits. Therefore, a Notice of Allowance is respectfully requested.

The Examiner is respectfully requested to contact the undersigned representative to conduct an interview in an effort to expedite prosecution in connection with the present application should there be any outstanding matters that need to be resolved in the present application.

Respectfully submitted,

Dated: November 19, 2008

A large, stylized handwritten signature in black ink, appearing to read "Luis M. Ortiz".

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